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10/775,496	02/10/2004	Naum Sapozhnikov		3277

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EXAMINER

MARCANTONI, PAUL D

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,496

Applicant(s)

SAPOZHNIKOV, NAUM

Examiner

Paul Marcantoni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-13 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

New Matter added to Original Disclosure:

The applicants addition of new matter added to their original specification is objected to for the following reasons: First, applicants add the word "quarry" on page 8 of their response which is an amendment for page 6, lines 19-26 and page 7, lines 1-8 of their specification. Quarry is not supported by the original disclosure and is a new matter addition to the specification. Deletion of this term is advised from the original disclosure.

Also, on page 9 of their response, the applicants add the limitation "47.5 mm" which appears to be a typographical error and but presently because of it is new matter. Applicants may correct to 4.75 mm.

Non-Elected by Original Presentation:

Newly submitted claim 14 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 14 is directed to concrete "pavement" and not a concrete composition. Further, the pavement is directed to an article or "layered" structure which is different than simply a composition. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 14 is withdrawn from

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consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

35 USC 112 First Paragraph:

Claims 3-13 are not commensurate with an enabling disclosure because the applicants' specification requires specific amounts of cement, sand, coarse aggregate (ie limestone), and water to obtain a high compressive strength. Applicants are referred to their own Tables 3 and 5 on pages 11 and 13 of their specification which teaches specific amounts of these components that are required to obtain high compressive strengths. Applicants do not have support for virtually any or all amounts from zero to 100 wt% for each component and still obtain their claimed compressive strengths of up to 5000 psi. Applicants are bound by their specification to the specific amounts that allow for them to obtain the compressive strengths of up to 5000 psi.

35 USC 112 Second Paragraph:

Claims 3-13 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

Claims 3-13 do not particularly point out and distinctly claim the specific ranges of amounts of cement, sand, coarse aggregate (ie limestone), and water to obtain a high compressive strength of up to 5000 psi. Applicants must provide a specific range of amount of each component critical to obtain high compressive strengths.

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35 USC 102:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-13 are rejected under 35 U.S.C. 102(a and b) as anticipated by Turpin Jr. '105 B1, Sawara et al. '831 B1, Cangiano et al. '502, Wagh et al. '493, Urschel III et al. '716, Nelles '107, GB 2085865 (Walters), *Rols et al.*, *Orlovskii*, *Popko et al.*, *Yamamoto et al.* (JP 2001039756), *Choi et al.*, or *Shi et al.*

Turpin Jr '105 B1 teaches a cement/concrete composition containing limestone having compressive 28 day strength of 8940 psi (see Table 2 in col.5). Turpin's limestone has a fineness of at least minus #100 US standard sieve or 150 microns. This composition thus anticipates the instant invention.

Sawara et al. teach a concrete comprising ground calcium carbonate of mean particle size of 0.5 to 3 microns with a compressive strength within that claimed for

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applicants instantly claimed invention. Note that applicants "up to 5000 psi" includes every psi from zero up to 5000 psi.,

Cangiano et al. '502 teach a concrete comprising limestone in the particle size of applicants' instantly claimed invention and a compressive strength that is also within the applicants' claimed range (See claims and Tables).

Wagh et al. '493 teach a concrete comprising limestone and leads to a compressive strength of 4000 psi after 24 hrs from pouring. It is understood and known in the art that raw materials can be ground before addition to concrete.

Urschel III et al. '716 teach a concrete comprising limestone with coarse aggregate which was from 1 inch mesh to No.4 mesh thus anticipating the instant invention (see col.3, lines 14-17).The various Tables in Urschel III et al. teach compressive strengths within the range of applicants' instantly claimed invention.

Nelles '107 teach a concrete comprising limestone (which can be substituted for sand as the fine aggregate) in the particle size of small enough to pass through a 3/8" mesh screen which is equivalent to 0.375" which is equivalent to 9.5 mm, the same upper limit claimed by applicants for their instantly claimed invention.

GB 2085865 teaches a concrete composition comprising coarse aggregate limestone particles of sizes in the range from 3 mm to 6 mm (see p.2 line 37) and would also appear to have a compressive strength in the range claimed by applicants for their claimed invention.

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Rols et al. teach a composition comprising a limestone waste in the form of limestone dust to make concrete that is used to obtain a compressive strength of 35 MPa which is equivalent to 5076 psi (see abstract).

Orlovskii teach a composition comprising limestone dust used to make concrete with a compressive strength of 62.3 MPa which is equivalent to 9036 psi (see abstract).

Popko et al. teach using limestone wastes that are ground or unground used to make concrete with a compressive strength as high as 314 kg/sq cm which is equivalent to 4466 psi (see abstract)

Yamamoto et al. (JP '756) teach a concrete comprising limestone powder that has a compressive strength after 28 days of greater than 30 N/sq mm which is equivalent to 4351.13 psi.

Choi et al. teach a concrete comprising limestone mine waste which is used as an aggregate to make concrete (See abstract).

Shi et al. teach the use of limestone dust (a form of limestone waste) that is used to make concrete thus anticipating the instant invention (see abstract).

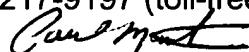
35 USC 103:

Claims 3-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turpin Jr. '105 B1, Sawara et al. '831 B1, Cangiano et al. '502, Wagh et al. '493, Urschel III et al. '716, Nelles '107, GB 2085865 (Walters), *Rols et al.*, *Orlovskii*, *Popko et al.*, *Yamamoto et al. (JP 2001039756)*, *Choi et al.*, or *Shi et al.* alone or in view of Siegemann (Mitt Kgl Materialprüfungsamt --year 1912)

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All of the above cited references teach a concrete composition comprising limestone in a particle size that overlaps the instantly claimed invention. Further, overlapping ranges of amounts for the concrete/cement compositions would have been prima facie obvious to one of ordinary skill in the art. More so, Siegemann teach it is old and known in the art to use limestone waste or rubble to make concrete. One of ordinary skill in the art would thus have understood that limestone rubble or waste is already old and known in the art to make concrete and the mere use of the waste material versus the virgin limestone material is not an obvious patentable distinction as the raw material for concrete because the composition itself is still exactly the same. That is, it is still limestone. The use of limestone waste versus virgin limestone would thus have been an obvious design choice for one of ordinary skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Paul Marcantoni
Primary Examiner
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